

because the form had not been returned).<sup>256</sup>

- (6) These small business customers might well prefer one-stop shopping to shopping around, especially for certain services, because they often operate with limited resources.

Thus, a written prior authorization requirement would operate successfully only if the small business customer was already fairly knowledgeable about enhanced services and was sufficiently interested in the examples given to expend scarce resources on making sure the form was returned. An oral authorization might be obtainable but would require significant "on line" time between the subscriber and the customer and might prove cost prohibitive.

As to customer notification for this market, the effectiveness of such notification is certainly unclear. While USWC has done such notification, there is no demonstrable evidence that that notification advanced the state of the small business customer's general knowledge with regard to enhanced services and there is, at least, anecdotal evidence that it may have produced confusion.

c. The residential consumer.

The large business customer has been called "sophisticated" by the Commission.<sup>257</sup> The term "sophisticated," within this

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<sup>256</sup>Attempting to secure such an oral authorization, especially if the attempt were made after an attempt to secure a prior authorization via a written return card, could well make this kind of "integration" cost prohibitive.

<sup>257</sup>See notes 243-45 and accompanying text, supra.

context, has generally meant familiar with the Commission's rules as to "basic versus enhanced" services, familiar as to the acronym CPNI and what can or cannot be done with it, interested in multiple sources of supply and not motivated to purchase upon initial inquiry.

While that use of the term "sophisticated" might not apply to most residential consumers, they are not unsophisticated purchasers. It is true that these consumers do not care about legal denominations or definitions.<sup>258</sup> However, these consumers know what they want and how they want to go about getting it:

- (1) These customers "want convenient, timely, high quality, reliable products and services that meet their needs and provide value for their money."<sup>259</sup>
- (2) Furthermore, these consumers do not have telecommunications purchases uppermost in their minds. Thus, informing them of the options available to them and making the products and services they might desire easy to buy and to use is critical to satisfying their market needs.<sup>260</sup>

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<sup>258</sup>See Linda Malloy's "Colorado ONA Hearings Opening Statement," November 26, 1990, at 6, attached hereto as Appendix B (Ms. Malloy observes that "[f]or example, despite our best efforts, we've been unsuccessful in explaining toll calling distinguished by LATAs because they are not founded in terms of customer needs.") ("Malloy Statement").

Ms. Malloy is the Vice President and General Manager of USWC's Home and Personal Services Unit. That unit serves the residential consumer marketplace. Her observations were based on considerable market research that has been done by that Unit.

As Ms. Malloy's Statement makes clear, she was addressing the possibility that in Colorado a prior authorization rule for USWC's use of CPNI might be adopted. Such a rule was not ultimately adopted.

<sup>259</sup>Malloy Statement at 3.

<sup>260</sup>See id. and at 6-7.

- (3) These consumers do not speak "telephonese" or jargon.<sup>261</sup> They are most likely to respond to messages that have some immediate significance or materiality to them.
- (4) These consumers want one-stop shopping.<sup>262</sup>
- (5) These consumers do not want to take their time to return prior authorization cards.<sup>263</sup> However, after much prodding and expense, authorization could be secured from them.<sup>264</sup>
- (6) This consumer group is not homogenous. Within the residential consumer market itself, there can be significant segmentation and differentiation based on geography.<sup>265</sup>

These consumers make up the majority of USWC's mass market. They number about 23 million subscribers. Sending any document to these consumers is expensive. How would these consumers respond to a mailed prior authorization card that needed to be returned? How would they respond to a declaratory CPNI notification? What would be the effect to USWC's joint marketing capabilities?

USWC submits that this Commission has little information at its disposal to answer these questions with regard to the

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<sup>261</sup>See note 258, supra.

<sup>262</sup>See Malloy Statement at 3.

<sup>263</sup>See id. at 7. These consumers would be unlikely to "use THEIR valuable time to write to us to [allow us to] use the records that they know we already have[.]" Id. (emphasis in original).

<sup>264</sup>See discussion below at 87-89 with regard to the Idaho Inside Wire experiment.

<sup>265</sup>This is different from the large business market segment, perhaps, especially those large businesses that purchase interstate services -- the very businesses with which the Commission is most familiar.

residential consumer. While it is obvious that the Commission often considers the residential consumer, and their interests, in public interest determinations and findings,<sup>266</sup> the Computer III proceeding has produced little independent information about the demographics associated with the residential consumer -- their knowledge, their interest in knowing more, or their purchasing patterns. These consumers have not been active participants in the Computer III proceedings and virtually no analysis has been done with regard to them.<sup>267</sup>

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<sup>266</sup>For example, in the proceedings dealing with presubscription procedures and certainly in the Alternative Operator Services docket, those consumer interests have been addressed. Indeed, even in access charge proceedings, where one of the ultimate goals is to reduce toll service to American consumers, residential interests are considered. And, certainly, in the enhanced service/structural separation proceedings, the interest of the residential marketplace have been a vital consideration in the Commission's deliberations.

<sup>267</sup>It is fair to say that the extent of a residential consumer's base knowledge is very different from that of a large business customer. While the latter has benefited from competition in the PBX market, has enough voice and data traffic to warrant trunk service on occasion, and understands that computers and telephony are converging technologically and conceptually, the former is still trying to cope with -- or deny -- the existence of divestiture and thinks of telephones as fairly simple gadgets purchasable from discount stores.

Furthermore, the BOC enhanced service that is currently most available to the residential market is voice mail -- an intrastate enhanced service, for the most part. As yet, the BOCs have filed no interstate enhanced services at all. And, it is not clear that such offerings will be attractive to, or purchased by, residential consumers. Thus, if any regulatory body could be expected to have a market understanding about the residential consumer market and its needs with regard to "authorizations" or "notifications" -- at least at this point in time -- it might be a state regulatory commission.

USWC, however, knows these consumers pretty well.<sup>268</sup> Prior authorizations, when sought within the context of an existing business relationship, are not easily understood by these consumers. Thus, it is not a reasonable expectation that these consumers would return a prior authorization card.<sup>269</sup> Given that it would be unreasonable to expect a written prior authorization, the failure to receive one cannot be interpreted to mean that the consumers intentionally -- and with a full understanding of the consequences -- meant to restrict their CPNI. Indeed, it would be more likely that they did not read, or did not understand, the request for prior authorization.

It would not, of course, be impossible to secure a prior written authorization. The question is, however, at what cost? And to what matter? Since these consumers do business with us, often routinely, we believe that we could, through expending enough money, get additional "consent" to use the CPNI of these consumers. But to secure such consent might well take more than one mailing, as well as affirmative outgoing contact calls.

While extrapolations are sometimes of limited value, USWC did have the opportunity to experiment with this approach in the State of Idaho with regard to inside wire maintenance. In May,

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<sup>268</sup>Attached to these Comments, as Appendix C, is an Affidavit from Mr. John D. Gonzales. (Because a facsimile of the Affidavit was only available at the time of filing, USWC will file the original on the next business day.) Mr. Gonzales' is considered a company expert in communicating with residential consumers, both as to the form and content of the communication and as to the expected or predictable consumer results.

<sup>269</sup>See Malloy Statement at 7.

1987, USWC had approximately 230,000 customers in Idaho enrolled in inside wire maintenance services. USWC sought to secure written customer authorizations from customers to continue their service. We did a first class mailing with a postage paid reply card to make the return response as easy as possible.<sup>270</sup> In documents filed before the Idaho Public Utilities Commission, USWC stated:

In the process of its research in preparing the mailers [that were being sent to customers], [USWC] has learned that in all likelihood only a very low percentage of the current wire maintenance customers will return the mailers despite special advertising encouraging the return.<sup>271</sup>

Later, as an alternative to "written" documentation, USWC requested to be able to secure oral authorizations when a customer contacted the company. Experience with such a method had demonstrated that 95% of the customers talked to requested to continue to receive the service or requested the service new.<sup>272</sup>

In addition to the oral taking of orders or confirmations,

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<sup>270</sup> Obviously, with regard to those customers that did not return the card, this mailing caused USWC to incur a substantial cost with no benefit to the company.

<sup>271</sup> See Application for Approval of Implementation Procedure, In the Matter of the Application of the Mountain States Telephone and Telegraph Company for an Order Approving Implementation Procedure, Case U-1000-92, before the Idaho Public Utilities Commission at 2 (emphasis added) ("USWC Application").

It should be noted that the inside wire mailing was made only after special advertising was done with regard to a known product that had actually been purchased by a considerable part of USWC's customer base. Certainly, a lesser return would be expected when the "message" was theoretical or abstract, as it would be with CPNI.

<sup>272</sup> See id. at 3.

USWC then sent out another mailer.<sup>273</sup> Furthermore, USWC later contacted, via a telephone call, those customers who had not responded to either of the mailings and who had not made a contact to the business office.<sup>274</sup>

Some of the important findings with regard to this experiment are:

- The first mailing and business office oral verifications from January, 1987 to May, 1987 resulted in 60,000 responses out of 232,000 customers.
- By utilizing a second mailer, the number of customers that were expected to be contacted via a telephone call was reduced to 150,000. It was anticipated that each call would take 4 minutes and would require 1250 person-days, requiring 50 people working 8 hours a day.
- Of the approximately 232,000 customers contacted by USWC, by the time the process was through, USWC had secured consent either in writing or orally from 189,640 customers or 81.74%.

This demonstrates that, for a price, USWC can secure customer consent. However, in the case of wire maintenance there was a known product, customers receiving that product, and a specific revenue flow associated with the product. With CPNI there is an abstraction regarding a corporate organization. Furthermore, the expenses incurred have only a diffuse

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<sup>273</sup>The second mailing went to those customers who (a) had not returned the first mailing to confirm in writing their desire to continue to receive the service and (b) who had not made a contact to the business office and proffered an oral authorization.

<sup>274</sup>USWC believed that "this approach [was] necessary to minimize the number of existing customers removed from the inside wire maintenance service without actually making a knowing decision to keep or terminate that service." USWC Application at 4 (emphasis added).

relationship to any revenue received.

According to the way that most CPNI procedures currently operate, the request for restriction must be in writing. So must the "unrestriction." Thus, looking at a prior authorization requirement within a residential environment, it is not unreasonable to assume that thousands of consumers would fail to "authorize". Thus, thousands of accounts would become mechanically password restricted, often due to consumer inertia alone (not necessarily an affirmative consumer intent).

When a consumer who had not affirmatively responded called in to discuss some "basic" service, no discussion would be conducted with regards to voice mail, for example. And, even if a consumer called in to discuss voice mail specifically, the BOC service representative would have to explain that the "account was restricted". At that point, without a doubt, the consumer would want an explanation as to what that meant, might well try to unrestrict the CPNI on the phone, would probably become irritated if the representative required something in writing, and a frustrated and irritated consumer would be the net result.<sup>275</sup> All the consumer would know was that he/she had made a call to a company that he/she does business with to order a service and the company treated them like a stranger and would

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<sup>275</sup>To add insult to injury, the frustration would have cost the BOC a lot in terms of "on line" discussion, with no expectation that the irritated consumer would later return a writing. The consumer might just forget the whole thing. Hardly the way to herald the advent of enhanced services to the mass market.



not sell them what they wanted! This is definitely not quality customer service.

In light of the above, it is clear that prior authorization is not something that is necessary to accommodate a consumer's reasonable expectations. Nor is it something impossible to get. It is, however, quite costly to secure. The fact that it can be gotten, however, and at fairly high numbers, demonstrates that getting it is more an exercise of form than a matter of substance. The need for prior authorization begins to look more and more like what it really is: a regulatory mechanism to appease opposing parties who have expended little of their resources on educating the consumer, who therefore have no existing relationship with many consumers in the mass market, and who prefer to expend their resources on regulatory posturing so as to impede the delivery of enhanced services to the mass market which they claim in so "uneducated."

As to consumer notifications unassociated with a prior authorization request, USWC has no reason to believe that such notifications would be read, or if read understood.<sup>276</sup> As discussed more fully below, communicating with the mass consumer

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<sup>276</sup>USWC submits that the Commission has no way of even gauging whether residential consumers would read such a "formal" notice. Without some evidence that such formal notice would be reasonably calculated to actually impart any useful information to residential consumers, which we doubt, such a notice requirement would clearly be elevating form over substance. If the notification were one more piece of paper to be filed in the wastebasket, nothing of value would really have been accomplished. USWC would still have access to the CPNI; other vendors would not be provided with the information absent a later proffer of customer consent.

market is an art, not a science. A discussion of "enhanced services" generally would impart information of little or no value to this market segment. Even using an example, such as voice mail, would not necessarily aid the consumer in recognizing another service as "enhanced" at a later point in time. The kind of customer notification that the Commission has compelled in the past would simply be costly and of little or no value to this market segment.

This Commission should be extremely cautious -- especially given its relative distance from the residential consumer on most issues before it -- in ordering a "CPNI notification" to the residential marketplace. Dictating either the media involved or the content of the notification could result in the expenditure of millions of BOC dollars with very little material or satisfying return.

In essence, the CPNI rules as they are now written comport just fine with a residential consumer's expectations. While they might not be as responsive as the Commission might like to the competitive vendors, they are not "unfair." The Commission has recognized over the years every aspect or contour of the current joint marketing landscape: the carriers have the databases; they need the databases to provide quality service to their customers; the customers want to make one call and be recognized. In the past, the Commission has viewed this scenario as not being perfect, perhaps, from a competitor's vantage point, but certainly not fundamentally unfair. Furthermore, the Commission

has found that its CPNI rules benefit the public and advance the delivery of enhanced services. It should do so again.

4. Consumer education.

The key to the proper resolution of the CPNI conundrum is not formalistic incantations, bill inserts or other ritualistic practices mandated by this Commission. The key is, instead, a consuming public aware of enhanced service offerings and the nature of information which is owned by telephone companies, the way it is used, and what the public's rights are with regard to such information. Obviously, the latter issue is considerably larger than the one addressed in this docket -- which is limited to which ESPs get what CPNI and under what conditions.

A legalistic notice between a BOC and a residential consumer about "CPNI" addresses such a small part of the information use and distribution landscape that it is almost misleading. For example, while a BOC might advise that CPNI will not be made available to others without the consumer's consent, the fact that Automatic Number Identification ("ANI") is being made available to third parties, often without the consumer's knowledge or consent, never gets mentioned. Furthermore, as interexchange services become more competitive and deregulated, the "information exchange" as between a BOC and a third party ESP or a BOC and an interexchange carrier is not materially different to a consumer.

The issue is not CPNI but the use, distribution and

dissemination of customer information in a telecommunications environment populated by multiple, and often competing, entities.<sup>277</sup> USWC hereby advises the Commission of its own preliminary plans with regard to an educational campaign within its region which will advise our customers about how we use, distribute and disseminate their personally identifiable information. Such information would include their phone number,<sup>278</sup> which might be disseminated via electronic number delivery services, such as Caller ID, ANI delivery services, Individual Calling Line Identification ("ICLID") via ISDN or through certain billing mechanisms or agreements;<sup>279</sup> their name and address,<sup>280</sup> which might be made available on list products that are purchased by directory publishers and others; and information about them contained in our customer records. The latter would include CPNI as that term has been defined by this Commission.<sup>281</sup>

For well over a year, USWC has been addressing the general subject of how we deal with the information we have about our customers. An internal Task Force has been looking at how we use, disseminate and distribute customer information, the

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<sup>277</sup>See McManus Report and note 227, supra.

<sup>278</sup>The phone number of a customer is not CPNI.

<sup>279</sup>Such as those entered into with carriers and 976 providers.

<sup>280</sup>Again, a customer's name and address is not CPNI.

<sup>281</sup>USWC does not anticipate using the telecommunications jargon used in this paragraph to describe services, products or technologies or any of the associated acronyms.

technologies involved, the players who receive information and the products that make it available. We have also discussed how much information our customers have about the information practices of the industry or of USWC, in particular. Frankly, we believe it is not a lot. And a lack of awareness about CPNI use or practices is but a small part of the fog.<sup>282</sup>

For example, while many of USWC's customers are currently becoming somewhat familiar with the Caller ID product offering, they probably know little or nothing about ANI delivery services that provide similar information; or while they are aware that their names and numbers, for the most part, show up in a printed directory (and, thus, must be being made available to publishers), they may not be aware that the "list" is available for purchase by anyone.

After many months, USWC determined that it was necessary that we have a position on the use of customer information, both that information which was delivered via the networks, such as Caller ID information, ANI information, and similar ISDN offerings; and that which was distributed off the network, such as by means of lists. To some extent, USWC wanted to work toward a redefinition of the debate that was going on with regard to the number delivery services. While there were all kinds of claims

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<sup>282</sup>By saying that consumers are not aware of certain information practices, USWC is not implying that they would be disturbed by those practices once they are made aware. For some consumers, for example, the delivery of ANI to 800/900 customers would be a violation of their privacy or their reasonable expectations about the use of their individual information, while use by the BOC of their CPNI would not bother them.

about "privacy" with regard to such products, it became apparent that what was really involved from a customer's perspective was not whether certain discrete information was "private" (such as that term is defined in the law of torts or under the Freedom of Information Act judicial precedents) but whether or not the customer had a choice with regard to the disclosure of personally identifiable information to third parties.

From the fundamental work done by the Task Force, USWC adopted a strategy with regard to customer information: U S WEST will maximize information flow restricted only by its customers' needs to control their own individual data. As is apparent, this strategy was not developed as a result of any regulatory compulsion; nor are the principles which derive from the strategy or the action items associated with it.

Because our strategy recognizes that customers should have certain opportunities to exercise choices, one of our supporting principles is to help educate our customers as to what those choices are. Such a task portends a major informational campaign. While we hope that we are not alone in our region in working toward advancing consumer awareness, the fact that we are the originator (at least in the eyes of customers) of much information<sup>283</sup> means that, rightly or wrongly, consumers look to us to explain what is going on. In the existing environment of multiple networks, multiple providers, alternative access and

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<sup>283</sup>For example, we pass the originating ANI to the carriers; we make the name and address lists available.

information providers, conjoined interexchange carrier and information provider companies and integrated BOC offerings, we believe that our consumers need some explanation as to what part we play in making -- or not making -- their personally identifiable information available to others and how we use their information internally.

But what this educational campaign will look like is not determined at this time. We are currently in the process of working with consumer groups, public affairs experts, regulatory representatives and other carriers on how we can make a positive contribution to the level of consumer awareness and information. We believe that our information campaign should be calculated to be easily understood and to describe as completely, but as understandably, as possible our use, dissemination, and distribution of customer information. Thus, the campaign will discuss ANI delivery to carriers, access services, ISDN and CPNI -- but perhaps probably without ever using any of these terms and certainly not using the acronyms.

Furthermore, we have not yet determined the most effective means or media to get our message across. Experts within our company who work with residential consumers advise that a consumer message is only relevant when the matter is "at issue" with the consumer, i.e., when there is some event that makes the subject matter important or significant. Thus, consumers who are familiar with Caller ID are interested in "privacy" messages or other "customer information use" messages. Those consumers who

have never thought about the issue might have no interest in reading about information use practices.

Those same experts advise that "writings" are not necessarily the best medium to use when communicating with residential consumers -- television advertising or newspaper advertising (with lots of white space) is sometimes more appropriate to the message and the task; and one media might work better in a certain geographical area than another. Furthermore, those same experts advise, not surprisingly, that any print communication with a residential consumer should be in plain language and devoid of acronyms.<sup>284</sup>

Once we have launched our information campaign, we will continue to be responsive to expressions from our customers as to how they want their information handled. For example, we will take people off lists if they want; we will explain -- to the best of our ability -- why ANI cannot currently be blocked;<sup>285</sup> we will restrict our enhanced services from using CPNI if the customer asks that it be restricted; we will provide CPNI to others, upon customer request.<sup>286</sup>

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<sup>284</sup>The text should also be written at no more than a sixth grade reading equivalency level to be understood by as broad a base as possible.

<sup>285</sup>Discussion of this issue, alone, with our customers is certain to increase our costs of doing business. Since we are the originator of the ANI, there are bound to be discussions as to why we cannot refuse to send it (as can be done with Caller ID services) or why we do not restrict it.

<sup>286</sup>Again, it must be stressed that the use of the acronyms in this discussion should not be read as committing USWC to discussing this issue with our customers in the "CPNI" jargon of



It must be reemphasized that USWC arrived at this position not from any legal or regulatory compulsion but due to our firm business opinion that for us and our consumer markets, it makes good business sense.<sup>287</sup> USWC is not here suggesting that the Commission order other BOCs to give all customers "CPNI notices" or to embark on customer education campaigns. Indeed, we firmly believe that the Commission should do no such thing. To the contrary, the issue of proper treatment of customer information and privacy expectations might not be an appropriate regulatory issue at all.<sup>288</sup>

The decision to communicate with the residential market

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this proceeding.

<sup>287</sup>As we discussed in Reply Comments filed with regard to the Baer Petition, if a BOC provides per-blocking with regard to Caller ID, some consumer education is mandated as to ANI. See Reply Comments of USWC, filed Sept. 19, 1990, in RM-7397, supra note 230, at 11-15. It is not fair to allow a consumer to assume that when they hit a certain series of digits that their phone number will be blocked when the realization of the blocking does not occur on a call receiving ANI. Thus, because at USWC we will offer Caller ID with blocking, some communication has to be exist with our customers.

Furthermore, we agree with certain findings of American Express that "Ninety percent of all Americans do not think that companies disclose enough about their list usage practices." Linen Remarks at 2, note 224, supra at 2.

As this industry moves further and further down the road of "multiples", i.e., providers, access, networks, etc., we think it is important for our customers to know what part we play or do not play in exchanging information between and among the multiples.

<sup>288</sup>To the extent that regulatory agencies have interests in the matter, the kind of customer record information included in the definition of CPNI would more tend to support a state regulatory interest than a federal one. The delivery of ANI, on the other hand, might be more appropriately dealt with at the federal level.

regarding consumer information use should be left to the BOCs themselves. First of all, CPNI notices, standing alone, probably will not really aid the consumer in understanding much about the current environment of multiple networks, multiple vendors, multiple technologies, electronic networks, off-network list practices, etc. To a residential consumer, a CPNI notice would probably be thrown away or simply produce a confused call to the business office. Second, since the expense associated with the kind of informational campaign contemplated by USWC does involve more than a discussion of CPNI, the decision to formulate such a campaign should be made by the business as a business decision. It is not a formulaic exercise and it is a substantial expense. Third, the BOCs should be able to formulate a consumer information campaign, if they deem one necessary, in the way they feel best meets market demands. Only this way will the message sought to be conveyed have a reasonable likelihood of being acknowledged and understood.

Finally, the Commission should encourage those members of the enhanced services industry to start carrying some of their own water with regard to consumer education regarding enhanced services, generally, and specific offerings in particular. If the consuming marketplace is as woefully uneducated and unaware as some competitors claim, that industry certainly has some responsibility for that state of affairs and some responsibility to change it. It does not advance the state of the industry or add to the innovation of new products and services if the BOCs'

resources are continually tapped and tasked with the job of advancing the state of consumer awareness for the whole industry.

V. COST ACCOUNTING SAFEGUARDS

The only ground on which the Ninth Circuit found that the Commission's actions in adopting its Computer III regime were arbitrary and capricious were with respect to the Commission's apparent change of position concerning the efficacy of cost accounting safeguards as protection against cross-subsidization with regard to the BOCs integrated provisioning of basic and enhanced services.<sup>289</sup> As was mentioned earlier,<sup>290</sup> the Ninth Circuit did not have the Commission's Part 64 and Part 32 rules before it when it considered the Commission's three Computer III orders. Because the decision to eliminate structural separation had been reached before these rules had been formally adopted,<sup>291</sup> there was little record evidence to support the Commission's position that viable cost accounting rules could be developed in the future to alleviate cross-subsidization concerns.

In the NPRM, the Commission is proposing to strengthen the nonstructural accounting safeguards already in place and to provide additional protections against cross-subsidization. At this point in time, the tentative assumptions of Computer III

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<sup>289</sup>See NPRM at ¶¶ 14-15 and discussion at 2, 3, 6, 9, 12-13, supra.

<sup>290</sup>See discussion at 12-13, supra.

<sup>291</sup>See id. and NPRM at ¶ 16.

## APPENDIX B

## APPENDIX B

Since U S WEST came into being, we have been attuned to the issues of customer information and individual concerns over privacy. At divestiture, customers who once were served by a vertically integrated "Ma Bell" (with all the maternal protectionism the term implies) were thrown head-on into an environment in which they were customers of multiple network providers. More than one company, including a long-distance company in the throes of competitive entry, were going to have information, often transactional, about that customer. Even that information extension did not sit well with many customers.<sup>1</sup>

In part because of the information practices that U S WEST had generally adhered to with regard to "third parties," as compared to what was clearly going to be required in a market environment composed of "shared customers," in 1989 U S WEST established a "Privacy Task Force" to look at the various ways in which information about our customers was shared and/or distributed to third parties and to assess the legitimacy of those practices vis-a-vis our customers' expectations.

From 1989 to mid-1992 the U S WEST Privacy Task Force deliberated over various issues associated with customer privacy, including the appropriate roll-out for Caller ID services. We worked with a Privacy Sub-Committee of a regulatory Regional

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<sup>1</sup>U S WEST had numerous complaints from nonpublished and nonlisted customers over the fact that their names, addresses and phone numbers were given out to "foreign" interexchange carriers for purposes of "equal access" initiatives, despite the fact that with regard to this initiative U S WEST permitted only direct mail marketing and not telemarketing.

Oversight Committee,<sup>2</sup> discussed and refined our policy through the help of the Minnesota Dialogue Group,<sup>3</sup> and spoke before various regulatory and legislative forums. During this time period, we participated in the Information Industry Liaison Committee's ("IILC") work with respect to calling number services and privacy issues, became involved in the Privacy Task Force of the Information Industry Association ("IIA"), were members of Dr. Bonnie Guiton's Privacy Task Group,<sup>4</sup> and sat in on meetings of the Leahy Task Force.<sup>5</sup>

Ultimately, U S WEST devised a customer information strategy that we felt appropriately balanced the value of information creation and transport and customers' desire for control and privacy. We determined that, as a network and information provider, we would "maximize information flow restricted only by [our] customers' needs to control their own individual data." We firmly believed and believe that maximizing information flow on our network, as well as on interconnected networks, works to the overall public benefit.

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<sup>2</sup>This Committee (the "ROC") is composed of representatives of our 14 state regulatory commissions.

<sup>3</sup>This is a consumer group in Minnesota which U S WEST works with on various public policy issues. We worked with them on our general privacy policy, as well as on matters pertaining to our Community Link gateway service.

<sup>4</sup>Dr. Guiton was the Special Advisor to the President in the Office of Consumer Affairs.

<sup>5</sup>In 1991, this group produced "Final Report of the Privacy and Technology Task Team," submitted to Senator Patrick J. Leahy in May 28, 1994.

Because we did not think, however, that there was currently a well-recognized "information agreement"<sup>6</sup> as between all users of the network with respect to information practices,<sup>7</sup> we felt it appropriate to allow customers to control the entry of information onto the network.<sup>8</sup> In essence, we decided that much of the clamor for "privacy" was really a matter of a desire for control and a lack of trust as between individuals making calls and recipients of information about them.<sup>9</sup> We believed, and still believe, that over time the kind of fundamental "information agreements" necessary to allow customers to feel confident about their release of information and to have trust in the various network and information service providers serving them would surface. This would result in customer non-disclosure practices waning.

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<sup>6</sup>This phrase was coined by Dr. Alan F. Westin in his interpretive essay to the The Equifax Report on Consumers in the Information Age, a national opinion survey conducted for Equifax, Inc., by Louis Harris and Associates and Dr. Alan F. Westin, Professor-Public Law and Government, Columbia University, 1990) at XXIII-XXIV.

<sup>7</sup>For example, our research led us to conclude that consumers did not consider a business "transaction" to have occurred until a "buy" decision was made, whereas businesses determined a "transaction" to have occurred at the point of consumer inquiry.

<sup>8</sup>Thus, we were the first company to voluntarily offer Caller ID with per-call blocking for free.

<sup>9</sup>As a result of this recognition, the "Privacy Task Force" changed its name to the "Customer Information Strategy Committee." We determined that a focus broader than "privacy" was required to fully accommodate customer concerns, which often involved control and choice components even in those circumstances where the associated information was not "private" in any legal or traditional sense.

In 1992, certain participants in the Customer Information Strategy Committee approached our senior U S WEST management advising that the work that had been done had demonstrated that what was really necessary was an overall "Information Policy" for U S WEST. Privacy and strategies about customer information were but two, fairly restrictive, aspects of information policy. Much of the information customers wanted "private" was public as the result of many other transactions the customers had engaged in; much of the control customers thought they had, they really did not have (due to information businesses and bureaus).

Furthermore, some of the information customers wanted kept private was U S WEST's business information. We began to look at other trade secret and intellectual property assets we had and started to more seriously investigate the "nature" of the information market -- not just with regard to customer transactional information but to all kinds of information, especially as it becomes digitized and delivered over various types of network facilities.

During this period and to the present, we became more active participants in the U.S. Council for International Business ("USCIB"), had representation at the Aspen Institute's "Individual Bill of Rights" symposium (wherein a "Bill of Rights" with respect to the use of individually identifiable information was debated and discussed), became Founding Grantors of Privacy and American Business, joined the Cross-Industry Working Group of the National Information Infrastructure ("NII") (recently being



asked to chair its Privacy Subcommittee), and late last year, spoke before Patricia Faley's NII Privacy Task Force Group.

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